

2009 DRAFTING REQUEST

Bill

Received: **06/29/2009**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Joe Parisi (608) 266-5342**

By/Representing: **mike Murray**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Discrimination**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Parisi@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibition of employers inquiring into arrest or conviction record of applicant until interview

Instructions:

See attached--prohibit employers from inquiring about arrest or conviction record until applicant has been selected for job interview

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 07/02/2009	bkraft 07/23/2009					S&L
/1			rschluet 07/23/2009		cdurst 07/23/2009		S&L
/2	gmalaise 07/28/2009	bkraft 08/10/2009	mduchek 08/10/2009		sbasford 08/10/2009	cdurst 03/09/2010	

FE Sent For: "1/2" @ intro, 3/15/10

<END>

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/1		1/2 bjk 8/10	rschluet 07/23/2009	_____	cduerst 07/23/2009		

FE Sent For:


8/10
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1/?	gmalaise	1 bjk 7/21					
FE Sent For: <END>							

Malaise, Gordon

From: Murray, Mike
Sent: Monday, June 29, 2009 10:35 AM
To: Malaise, Gordon
Subject: Employment Bill

Hi Gordon,

I've pasted the Minnesota language below. We would like the our draft to apply to both public and private employers. We also would like to have similar carve outs for jobs where the employer is required to do a background check and is prohibited from hiring people with certain convictions. Thanks,

Mike

I've also included a link to the omnibus bill where this provision is included. It's Section 11 of the bill:
<https://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H1301.3.html&session=ls86>

30.30 Sec. 11. **[364.021] PUBLIC EMPLOYMENT; CONSIDERATION OF**

30.31**CRIMINAL RECORDS.**

30.32(a) A public employer may not inquire into or consider the criminal record or
30.33criminal history of an applicant for public employment until the applicant has been
30.34selected for an interview by the employer.

31.1(b) This section does not apply to the Department of Corrections or to public
31.2employers who have a statutory duty to conduct a criminal history background check
31.3or otherwise take into consideration a potential employee's criminal history during the
31.4hiring process.

31.5(c) This section does not prohibit a public employer from notifying applicants that
31.6law or the employer's policy will disqualify an individual with a particular criminal history
31.7background from employment in particular positions.

Mike Murray
Office of Representative Joe Parisi

Criminals; Rehabilitation**CHAPTER 364****CRIMINAL OFFENDERS, REHABILITATION**

364.01	POLICY.	364.06	VIOLATIONS, PROCEDURE.
364.02	DEFINITIONS.	364.07	APPLICATION.
364.03	RELATION OF CONVICTION TO EMPLOYMENT OR OCCUPATION.	364.08	PRACTICE OF LAW; EXCEPTION.
364.04	AVAILABILITY OF RECORDS.	364.09	EXCEPTIONS.
364.05	NOTIFICATION UPON DENIAL OF EMPLOYMENT OR DISQUALIFICATION FROM OCCUPATION.	364.10	VIOLATION OF CIVIL RIGHTS.

364.01 POLICY.

The legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.

History: 1974 c 298 s 1

364.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 364.01 to 364.10, the terms defined in this section have the meanings given them.

Subd. 2. **Occupation.** "Occupation" includes all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by the state of Minnesota, its agencies, or political subdivisions.

Subd. 3. **License.** "License" includes all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by the state of Minnesota, its agents or political subdivisions before a person can pursue, practice, or engage in any occupation.

Subd. 4. **Public employment.** "Public employment" includes all employment with the state of Minnesota, its agencies, or political subdivisions.

Subd. 5. **Conviction of crime or crimes.** "Conviction of crime or crimes" shall be limited to convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. No other criminal conviction shall be considered.

Subd. 6. **Hiring or licensing authority.** "Hiring or licensing authority" shall mean the person, board, commission, or department of the state of Minnesota, its agencies or political

subdivisions, responsible by law for the hiring of persons for public employment or the licensing of persons for occupations.

History: 1974 c 298 s 2

364.03 RELATION OF CONVICTION TO EMPLOYMENT OR OCCUPATION.

Subdivision 1. **No disqualification from licensed occupations.** Notwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.

Subd. 2. **Conviction relating to public employment sought.** In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider:

- (1) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (2) the relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;
- (3) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

Subd. 3. **Evidence of rehabilitation.** (a) A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought. Sufficient evidence of rehabilitation may be established by the production of:

- (1) a copy of the local, state, or federal release order; and
- (2) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or
- (3) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

(b) In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

- (1) the nature and seriousness of the crime or crimes for which convicted;

(2) all circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;

(3) the age of the person at the time the crime or crimes were committed;

(4) the length of time elapsed since the crime or crimes were committed; and

(5) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

History: 1974 c 298 s 3; 1986 c 444

364.04 AVAILABILITY OF RECORDS.

The following criminal records shall not be used, distributed, or disseminated by the state of Minnesota, its agents or political subdivisions in connection with any application for public employment nor in connection with an application for a license:

(1) Records of arrest not followed by a valid conviction.

(2) Convictions which have been, pursuant to law, annulled or expunged.

(3) Misdemeanor convictions for which no jail sentence can be imposed.

History: 1974 c 298 s 4

364.05 NOTIFICATION UPON DENIAL OF EMPLOYMENT OR DISQUALIFICATION FROM OCCUPATION.

If a hiring or licensing authority denies an individual a position of public employment or disqualifies the individual from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the individual's prior conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the following:

(1) the grounds and reasons for the denial or disqualification;

(2) the applicable complaint and grievance procedure as set forth in section 364.06;

(3) the earliest date the person may reapply for a position of public employment or a license; and

(4) that all competent evidence of rehabilitation presented will be considered upon reapplication.

History: 1974 c 298 s 5

364.06 VIOLATIONS, PROCEDURE.

Any complaints or grievances concerning violations of sections 364.01 to 364.10 shall be processed and adjudicated in accordance with the procedures set forth in chapter 14, the Administrative Procedure Act.

History: 1974 c 298 s 6; 1982 c 424 s 130

364.07 APPLICATION.

The provisions of sections 364.01 to 364.10 shall prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment on the grounds of conviction of a crime or crimes. In deciding to grant, deny, revoke, suspend, or renew a license, or to deny, suspend, or terminate public employment for a lack of good moral character or the like, the hiring or licensing authority may consider evidence of conviction of a crime or crimes but only in the same manner and to the same effect as provided for in sections 364.01 to 364.10. Nothing in sections 364.01 to 364.10 shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment.

History: 1974 c 298 s 7; 1985 c 248 s 70

364.08 PRACTICE OF LAW; EXCEPTION.

This chapter shall not apply to the practice of law; but nothing in this section shall be construed to preclude the Supreme Court, in its discretion, from adopting the policies set forth in this chapter.

History: 1974 c 298 s 8

364.09 EXCEPTIONS.

(a) This chapter does not apply to the licensing process for peace officers; to law enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire protection agencies; to eligibility for a private detective or protective agent license; to the licensing and background study process under chapters 245A and 245C; to eligibility for school bus driver endorsements; to eligibility for special transportation service endorsements; to eligibility for a commercial driver training instructor license, which is governed by section 171.35 and rules adopted under that section; to emergency medical services personnel, or to the licensing by political subdivisions of taxicab drivers, if the applicant for the license has been discharged from sentence for a conviction within the ten years immediately preceding application of a violation of any of the following:

(1) sections 609.185 to 609.21, 609.221 to 609.223, 609.342 to 609.3451, or 617.23, subdivision 2 or 3;

(2) any provision of chapter 152 that is punishable by a maximum sentence of 15 years or more; or

(3) a violation of chapter 169 or 169A involving driving under the influence, leaving the scene of an accident, or reckless or careless driving.

This chapter also shall not apply to eligibility for juvenile corrections employment, where the offense involved child physical or sexual abuse or criminal sexual conduct.

(b) This chapter does not apply to a school district or to eligibility for a license issued or renewed by the Board of Teaching or the commissioner of education.

(c) Nothing in this section precludes the Minnesota Police and Peace Officers Training Board or the state fire marshal from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement or fire protection agencies.

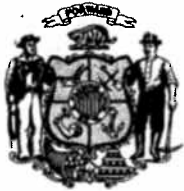
(d) This chapter does not apply to a license to practice medicine that has been denied or revoked by the Board of Medical Practice pursuant to section 147.091, subdivision 1a.

History: 1974 c 298 s 9; 1983 c 304 s 5; 1986 c 444; 1Sp1986 c 1 art 9 s 28; 1987 c 378 s 16; 1989 c 85 s 1; 1989 c 171 s 8; 1989 c 290 art 8 s 2; 1990 c 542 s 16; 1991 c 265 art 9 s 69; 1992 c 499 art 8 s 24; 1992 c 578 s 54; 1993 c 159 s 1; 1995 c 18 s 12; 1995 c 226 art 3 s 45; 1997 c 248 s 44; 1Sp1997 c 2 s 58; 1998 c 398 art 5 s 55; 1999 c 191 s 1; 2000 c 478 art 2 s 7; 2001 c 144 s 1; 2003 c 15 art 1 s 33; 2003 c 130 s 12; 2005 c 10 art 2 s 4

364.10 VIOLATION OF CIVIL RIGHTS.

Violation of the rights established in sections 364.01 to 364.10 shall constitute a violation of a person's civil rights.

History: 1974 c 298 s 10



State of Wisconsin
2009 - 2010 LEGISLATURE

IN 7/2

LRB-3050/1

GMM.....

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LPS- Please check
spelling.

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prohibiting
prohibiting

①

AN ACT ...; relating to; consideration of any conviction record of an applicant for
employment before the applicant has been selected for an interview.

2

Analysis by the Legislative Reference Bureau

> Current law, subject to certain exceptions, prohibits discrimination in employment based on conviction record. Current law specifies, however, that it is not employment discrimination because of conviction record to refuse to employ an individual who has been convicted of a felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job.

Notwithstanding that exception, current law requires an employer to conduct a criminal history search of an applicant for employment in certain occupations, including caregiver at certain entities that provide care or treatment services for children or adults, human services vehicle operator, alternative pupil transportation provider, state civil service position involving fiduciary responsibility, Lottery Division in the Department of Revenue employee, or Indian gaming employee. Current law also requires an employer to consider the conviction record of an applicant for employment in certain other occupations, including police officer or fire fighter, burglar alarm installer, civil service position with a first class city (presently only Milwaukee), Division of Gaming in the Department of Administration employee, or bingo caller.

This bill provides that employment discrimination because of conviction record includes requesting an applicant for employment, on an application form or otherwise, to supply information regarding any conviction record of the applicant, or otherwise inquiring into or considering the conviction record of an applicant for employment, before the applicant has been selected for an interview by the prospective employer.

The bill, however, does not apply to a position for which an employer is required to conduct a criminal history search, or is otherwise required to consider the conviction record, of an applicant for employment under any state law or rule, federal law or regulation, or local ordinance.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 111.335 (1) (am) of the statutes is created to read:

2 111.335 (1) (am) 1. Employment discrimination because of conviction record
3 includes requesting an applicant for employment, on an application form or
4 otherwise, to supply information regarding any conviction record of the applicant, or
5 otherwise inquiring into or considering the conviction record of an applicant for
6 employment, before the applicant has been selected for an interview by the
7 prospective employer.

8 2. Subdivision 1. does not apply to a position for which an employer is required
9 to conduct a criminal history search of an applicant for employment under s. 48.685
10 (2) (b) 1. a., 50.065 (2) (b) 1., 85.21 (3m) (d), 121.555 (3) (a), 230.17 (3), 565.02 (1) (c)
11 or (2) (d), or 569.04 (2) or under any other state law or rule, federal law or regulation,
12 or local ordinance or for which an employer is otherwise required to consider the
13 conviction record of an applicant for employment under s. 602.13 (4) (d), 62.50 (5),
14 63.25 (1) (a), 134.59 (1), ~~230.143~~ 562.045, or 563.51 (29) ^(b) or under any other state law
15 or rule, federal law or regulation, or local ordinance.

16 3. Subdivision 1. does not prohibit an employer from notifying applicants for
17 employment that, subject to this section and ss. 111.321 and 111.322, an individual
18 with a particular conviction record may be disqualified by law or under the
19 employer's policies from employment in particular positions.

SECTION 2. Initial applicability.

(1) CONSIDERATION OF CONVICTION RECORD. This act first applies to an application for employment submitted to an employer on the effective date of this subsection.

SECTION 3. Effective date.

(1) CONSIDERATION OF CONVICTION RECORD. This act takes effect on the first day of the 6th month beginning after publication.

(END)

Malaise, Gordon

From: Murray, Mike
Sent: Tuesday, July 28, 2009 3:33 PM
To: Malaise, Gordon
Subject: RE: LRB 3050/1

Hi Gordon,

Thanks so much for getting back to me about this. Joe would like to go along w/your suggestion to just delete the exception section. Thanks for doing this.

Mike

From: Malaise, Gordon
Sent: Tuesday, July 28, 2009 10:22 AM
To: Murray, Mike
Subject: RE: LRB 3050/1

Mike:

I see your point and would accordingly advise that the entire exception simply be deleted as unnecessary.

Specifically, I added the exception for positions for which a criminal background check is required or for which an employer is otherwise required to consider the conviction record of an applicant because I figured that the employer would have to require conviction record information at some point anyway, so the employer might as well get it over with before selecting applicants for interviews if that's how the employer wants to handle it. In drafting the exception I was able to find the specific cross references under state law, but knew that there are probably federal and local provisions as well requiring background checks or consideration of a conviction record, so I added the catchall language, i.e., "or any other . . .".

Now you have raised a possible unintended consequence, that is, that a municipality could circumvent the draft by enacting an ordinance requiring all employers in the municipality to conduct background checks. Under the broad "or any other . . ." catchall language, a municipality could do just that.

So, I would simply delete the entire exception. There is no conflict. Both the draft and the statutes requiring background checks can stand. All it would mean is that the employer would have to wait until the interview to do the background check.

Gordon

From: Murray, Mike
Sent: Monday, July 27, 2009 10:48 AM
To: Malaise, Gordon
Subject: LRB 3050/1

Hi Gordon,

I just had a chance to review the draft you sent us regarding employers inquiring into an applicant's conviction record. Thanks for getting it drafted; it looks very good overall. I just had one concern. The draft states that the bill's prohibition specifically does not preempt any local ordinances to the contrary. I'm a little concerned about localities passing laws that would basically just gut the requirements of this bill. Is that something you think needs to be addressed or are the local ordinances that you are aware of simply measures to ensure that people who commit crimes that are substantially related to the job position under consideration?

If you are unsure about what localities are doing or if you think there is a real chance that this provision could seriously undermine the bill, I would like to consider narrowing the exception for local ordinances to only allow consideration of the applicant's record if the violation is substantially related to the position for which the applicant is applying. I know that's already the law, but Joe was concerned about the localities using exceptions to fundamentally undermine the bill.

Please feel free to call our office if you'd rather talk about this (6-5342).

Thanks Gordon,

Mike

Mike Murray
Office of Representative Joe Parisi



State of Wisconsin
2009-2010 LEGISLATURE

SN 7/28

LRB-3050/01

GMM:bjk:rs

stays

RMR

2009 BILL

5000

SA

regen.

- 1 AN ACT *to create* 111.335 (1) (am) of the statutes; **relating to:** prohibiting
- 2 consideration of any conviction record of an applicant for employment before
- 3 the applicant has been selected for an interview.

Analysis by the Legislative Reference Bureau

Current law, subject to certain exceptions, prohibits discrimination in employment based on conviction record. Current law specifies, however, that it is not employment discrimination because of conviction record to refuse to employ an individual who has been convicted of a felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job.

~~Notwithstanding that exception, current law requires an employer to conduct a criminal history search of an applicant for employment in certain occupations, including caregiver at certain entities that provide care or treatment services for children or adults, human services vehicle operator, alternative pupil transportation provider, state civil service position involving fiduciary responsibility, Lottery Division in the Department of Revenue employee, or Indian gaming employee. Current law also requires an employer to consider the conviction record of an applicant for employment in certain other occupations, including police officer or fire fighter, burglar alarm installer, civil service position with a first class city (presently only Milwaukee), Division of Gaming in the Department of Administration employee, or bingo caller.~~

This bill provides that employment discrimination because of conviction record includes requesting an applicant for employment, on an application form or

BILL

prohibit an employer from notifying applicants for employment that an individual with a particular conviction record may be disqualified by law or the employer's policies from employment in particular positions

otherwise, to supply information regarding any conviction record of the applicant, or otherwise inquiring into or considering the conviction record of an applicant for employment, before the applicant has been selected for an interview by the prospective employer.

The bill, however, does not apply to a position for which an employer is required to conduct a criminal history search, or is otherwise required to consider the conviction record, of an applicant for employment under any state law or rule, federal law or regulation, or local ordinance.

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SECTION 1. 111.335 (1) (am) of the statutes is created to read:

111.335 (1) (am) 1. Employment discrimination because of conviction record includes requesting an applicant for employment, on an application form or otherwise, to supply information regarding any conviction record of the applicant, or otherwise inquiring into or considering the conviction record of an applicant for employment, before the applicant has been selected for an interview by the prospective employer.

2. Subdivision 1. does not apply to a position for which an employer is required to conduct a criminal history search of an applicant for employment under s. 48.685 (2) (b) 1. a., 50.065 (2) (b) 1., 85.21 (3m) (d), 121.555 (3) (a) 1., 230.17 (3), 565.02 (1) (c) or (2) (d), or 569.04 (2) or under any other state law or rule, federal law or regulation, or local ordinance or for which an employer is otherwise required to consider the conviction record of an applicant for employment under s. 62.13 (4) (d), 62.50 (5), 63.25 (1) (a), 134.59 (1), 562.045, or 563.51 (29) (b) or under any other state law or rule, federal law or regulation, or local ordinance.

2. Subdivision 1. does not prohibit an employer from notifying applicants for employment that, subject to this section and ss. 111.321 and 111.322, an individual

BILL

1 with a particular conviction record may be disqualified by law or under the
2 employer's policies from employment in particular positions.

3 **SECTION 2. Initial applicability.**

4 (1) CONSIDERATION OF CONVICTION RECORD. This act first applies to an application
5 for employment submitted to an employer on the effective date of this subsection.

6 **SECTION 3. Effective date.**

7 (1) CONSIDERATION OF CONVICTION RECORD. This act takes effect on the first day
8 of the 6th month beginning after publication.

9 **(END)**

Duerst, Christina

From: Murray, Mike
Sent: Tuesday, March 09, 2010 9:50 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-3050/2 Topic: Prohibition of employers inquiring into arrest or conviction record of applicant until interview

Please Jacket LRB 09-3050/2 for the ASSEMBLY.